85 FLRR 1-1225

Internal Revenue Service, Kansas City Service Center, Kansas City, MO and NTEU and NTEU, Local Chapter 66

Federal Labor Relations Authority

7-CA-1000; 7-CA-1002; 18 FLRA No. 80; 18 FLRA 693

June 21, 1985

Judge / Administrative Officer

Before: Frazier, Acting Chairman; McGinnis, Member

Related Index Numbers

72.615 Employer Unfair Labor Practices, Unilateral Change in Term or Condition of Employment, Adequacy of Bargaining

72.617 Employer Unfair Labor Practices, Unilateral Change in Term or Condition of Employment, Bargaining Over Impact and Implementation of Change

72.66 Employer Unfair Labor Practices, Unilateral Change in Term or Condition of Employment, Defenses to Unilateral Change

Case Summary

THE SAMPLE PERFORMANCE EXPECTATIONS PROVIDED TO THE UNION WERE SUFFICIENT TO PERMIT IMPACT BARGAINING. Contrary to the ALJ, the FLRA found that the agency did not breach its duty to bargain over impact and implementation of new performance expectations by failing to provide the union with the actual performance expectations to be implemented. The record showed that three meetings were held before implementation. At the first meeting the employer discussed the general guidelines for the performance expectations in as much detail as possible, since they had not yet been formulated. At the second meeting the employer provided the union with two sample performance expectations not applicable to any particular work unit. At the third meeting the parties again discussed the sample standards, since the actual ones were not yet formulated. The Authority found that the sample standards provided to the union were sufficient for purposes of impact bargaining. Moreover, after implementation, the employer discontinued certain performance expectations when the union sought bargaining and the employer felt that the union proposals were nonnegotiable. The suspension continued during a negotiability appeal.

Full Text

DECISION AND ORDER

The Administrative Law Judge issued the attached Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices alleged in the consolidated complaint, and recommending that it be ordered to cease and desist therefrom and take certain affirmative action. The Judge further found that the Respondent had not engaged in certain other alleged unfair labor practices and recommended dismissal of the consolidated complaint as to them. Thereafter, the Respondent filed exceptions to the Judge's Decision.*1

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute (the Statute), the Authority has reviewed the rulings of the Judge made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. Upon consideration of the Judge's Decision and the entire record, the Authority hereby adopts the Judge's findings, conclusions and recommended Order,*2 only to the extent consistent herewith.

The Judge found that the Respondent violated sections 7116(a)(1) and (5) of the Statute by preventing the Union from bargaining effectively concerning the impact and implementation of the Respondent's decision to change certain conditions of employment.*3 The Authority disagrees. The record in the instant case reveals that the Respondent first notified the Union, at a labor-management meeting held on August 28, 1980, of its decision to institute

performance expectations by September 30, 1980, at the Kansas City Service Center. At this meeting the Respondent discussed the general guidelines of the proposed performance expectations with representatives of the Union in as much detail as possible at that time, given that actual performance expectations had not yet been formulated. The Respondent next met with the Union on September 10, 1980, to provide the Union with additional information concerning the changes in working conditions which was then available and to reaffirm its intention to implement those changes by September 30, 1980. At this meeting the Respondent provided the Union with two sample performance expectations, which were not applicable to any particular work unit within the Kansas City Service Center, but which were made available to the Union for general illustrative purposes. It was further established that the actual performance expectations applicable to particular work units at the Kansas City Service Center were not available at the time of the September 10 meeting as it was the Respondent's intention to allow individual supervisors to tailor the sample performance expectations to fit the needs of their particular units and this process had not yet been completed. The Union made no request to bargain at this meeting. Finally, the record also indicates that the Respondent and the Union met again on September 18, 1980 for the purpose of further discussing the sample copies of the performance expectations and that the Union failed to submit bargaining proposals at that time.

Although the Judge found that the Respondent's failure to provide the Union with the actual performance expectations applicable to particular work units of the Kansas City Service Center prevented the Union from bargaining effectively concerning the impact and implementation of the changes, the Authority concludes that under the circumstances herein, the sample performance expectations that the Union did receive at the September 10 meeting were sufficient for purposes of negotiating impact and implementation. In this regard, the General Counsel failed to demonstrate that the Union was prevented from presenting proposals at either of the September meetings described above based on the information it did receive. Moreover, the Union's request for more specific information with respect to actual performance expectations could not have been provided inasmuch as individual supervisors had not yet completed the task of tailoring the sample performance expectations to fit the needs of their particular work units. Finally, the Authority notes that when individual unit supervisors did eventually implement performance expectations specifically tailored to their particular work units, upon appropriate bargaining requests by the Union, the Respondent discontinued implementation in those work units until a decision on the negotiability of the requests was reached. Indeed, the record shows that agreement between the Union and the Respondent has been reached concerning the impact and implementation of the changes herein subsequent to the filing of the instant consolidated complaint. Therefore, on the basis of the foregoing record evidence, the Authority concludes that the Respondent did not prevent the Union from bargaining effectively under the circumstances herein and, accordingly, the allegation that the Respondent violated sections 7116(a)(1) and (5) of the Statute shall be dismissed.

ORDER

IT IS ORDERED that the consolidated complaint in Case Nos. 7-CA-1000 and 7-CA-1002 be, and it hereby is, dismissed in its entirety.

Issued, Washington, D.C., June 21, 1985

Henry B. Frazier III, Acting Chairman William J. McGinnis, Jr., Member FEDERAL LABOR RELATIONS AUTHORITY

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1. The General Counsel Exceptions were untimely filed and therefore have not been considered.

2. In adopting the Judge's dismissal of an allegation that Respondent violated sections

7116(a)(1) and (8) of the Statute by failing to supply certain data to the Union, the Authority notes that no timely exceptions were filed to such dismissal.

3. In so concluding, the Judge found that a substantial change in conditions of employment necessitates impact and implementation bargaining. The Authority emphasizes that such duty to bargain arises where an agency, in exercising a management right under section 7106 of the Statute, changes conditions of employment of unit employees, if such change results in more than a de minimis impact upon unit employees or such impact is reasonably foreseeable. U.S. Government Printing Office, 13 FLRA 203 (1983) and Department of Health and Human Services, Social Security Administration, Chicago Region, 15 FLRA No. 174 (1984).

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, Section 7101, et seq., and the Rules and Regulations issued thereunder, Fed. Reg. Vol. 45, No. 12, January 17, 1980, 5 C.F.R. Chapter XIV, Part 2411, et seq.

Pursuant to charges filed on February 9, 1981, by the National Treasury Employees Union and National Treasury Employees Union Local Chapter 66, (hereinafter called the NTEU or Union), a Consolidated Complaint and Notice of Hearing was issued on March 31, 1981, by the Regional Director for Region VII, Federal Labor Relations Authority, Kansas City, Missouri. The Consolidated Complaint alleges in substance that the Internal Revenue Service, Kansas City Service Center, Kansas City, Missouri, (hereinafter called the IRS or Respondent), violated Sections 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute), by virtue of its actions in (1) "unilaterally implementing changes in performance and dependability expectations (performance standards)" without first giving the Union prior notice of the changes and the opportunity to request bargaining with respect to impact, implementation, and the form of employee participation in the establishment of said performance standards; and (2) refusing to furnish the Union the historical data relied upon by Respondent in establishing the performance standards.

A hearing was held in the captioned matter on June 18, 1981, in Kansas City, Missouri. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues involved herein. The General Counsel and Respondent submitted post-hearing briefs on August 24, 1981, which have been duly considered.

Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendations.

Findings of Fact

Respondent's Kansas City Service Center, which employs several thousand individuals, is responsible for processing the tax returns emanating from four mid-western states. NTEU, Chapter 66 has been the exclusive representative of Respondent's non-supervisory employees since 1973. On August 31, 1977, the NTEU, of which Chapter 66 is a constituent local, was certified as the exclusive representative in a consolidated unit of all Respondent's Service Centers throughout the United States, including Kansas City.

The work performed by the employees at the Kansas City Service Center falls into two categories, measured or unmeasured work. Measured work is work which by its nature can be measured in terms of numbers and quality produced during a given span of time. Unmeasured work, on the other hand, is work which by its nature "doesn't lend itself to easy measurement". More than fifty percent of the employees at the Kansas City Service Center perform measured work.*1

Prior to August of 1980, Respondent had in effect written quantity and quality expectations for an

unspecified number of its units wherein measured work was performed. Other unspecified units were working under expectations which had been delivered verbally by the respective supervisors; and still other unspecified units were performing measured work with NO quantity or quality expectations at all.

In mid-July, 1980, the Director of the Service Center decided that the concept of written performance expectations should be expanded to cover the entire work force of the Kansas City Service Center, irrespective of the type of work performed. The performance expectations for the unmeasured work was to consist of a verbal written summary of the work to be performed and the proper manner to be utilized in performing the work. Measured work on the other hand was to consist of numerical expectations with respect to quantity and quality.*2

On August 28, 1980, a regular bi-monthly Labor-Management Relations Committee meeting was held. In addition to discussing several agenda items submitted by the Union, the Respondent, for the first time, informed the Union that it intended in the near future to update existing expectations and establish new expectations for all work performed by the employees at the Service Center. Thus, the minutes of the meeting, which were signed by Ms. Elizabeth Conway, Chief, Personnel Branch and Management Spokesperson and Ms. Anne Eckstein, NTEU Chapter 66 President, described the discussion of the performance expectation as follows:

1. Performance Expectations

Management stated that performance expectations would soon be issued in all areas of the Service Center. Many areas already have such expectations established and all will be reviewed at least quarterly once they are established. Management stated these expectations would be issued for the purpose of improving communications between managers and employees about what is expected of them. Management stated these would be used in granting or denying Within-Grade Increases and career ladder promotions and would also be used as a basis for incentive awards as well as for determining the appropriateness of adverse actions based on poor performance. Management stated the issuance of these expectations would not modify the requirements of the Multi-Center Agreement in any way and did not constitute establishment of a performance appraisal system or critical job elements which are to be established under the Civil Service Reform Act.

The Union asked how these expectations will affect ISEP and promotions. Management responded that these expectations do not affect evaluations based on ISEP nor do they affect evaluations prepared under the negotiated agreement for internal promotion announcements.

Management stated expectations would be issued by September 30, 1980. Management also stated plans were not completely finalized but would be shared with NTEU when they are finalized.

Representatives of the Respondent and the Union, pursuant to a request by the Respondent, met on or about September 10, 1980. At this meeting, Mr. William Bridges, Assistant Director of the Service Center, presented to the Union representatives in attendance, i.e. Ms. Eckstein, Union President and Mr. Ray Williams, Chief Steward, two sample copies of the new expectations which were going to be distributed to the managers who were responsible for supervising the various areas of the Service Center. The samples were not applicable to any particular area of the Service Center and indicated that new or returning employees would be expected to achieve a certain percentage of the expectations established for any particular area or job. Moreover, the samples did not set forth any numerical quantity and quality expectations.

Other than questioning the percentages appearing on the samples for new or returning employees, the Union made no request to bargain since they were not prepared for the presentation and had not had an opportunity to study the samples, which as noted above, were not applicable to any specific unit. The meeting ended with the Union stating it would get back in touch with the Respondent after it had an opportunity to go over the

information set forth in the samples.

On September 18, 1980, James Blase, a labor relations officer, met with Mr. Williams and Ms. Eckstein for purposes of further discussing the sample copies of the new expectations. During the course of the discussion the Union raised a number of its concerns with the new expectations and Mr. Blase attempted to assuage or pacify the Union and supply answers to various questions propounded by the Union. The meeting ended with the Union expressing dissatisfaction with the answers given by Mr. Blase and inquiring whether or not the Respondent intended to bargain with the Union over the expectations. Mr. Blase, according to a memorandum to the file dated September 19, 1980, informed the Union that negotiations would depend on the Union's proposals.

Beginning on or about September 18, 1980, and continuing through approximately October 1, 1980, Respondent without any further discussion or notice to the Union implemented new or revised production expectations in some 26 units of the Service Center where measured work was being performed. The production expectations made provision for new and/or returning employees to work up over a period of time to 100% of the performance expectations. Upon receiving the expectations in the respective units, the Union's Chief Steward immediately directed a form letter to the respective unit supervisors which requested substance, impact and implementation bargaining; that any implementation of the expectations be rescinded; and that the Union be provided all the historic information relied upon "to arrive at the quantity and quality percentages."*3

On October 10, 1980, Respondent directed a memorandum to Ms. Eckstein and Mr. Williams in response to their requests to negotiate the expectations implemented in some 26 individual units. The memorandum pointed out that during a meeting on October 1, 1980, management had indicated that while the performance expectations were non-negotiable it welcomed feedback from the Union concerning any specific problems in connection with the expectations. The memorandum went on to encourage such feedback and point out that the expectations were not part of the performance appraisal system required under the Civil Service Reform Act of 1978 which would be developed on a National level. Additionally, the memorandum indicated that there would be no deferral of implementation and that the Union's request for information underlying the expectations was denied since the information related to the substance of the expectations which Respondent considered to be outside the scope of bargaining.

The closing paragraph of Respondent's October 1, 1980, letter acknowledged that there may be impact and implementation proposals which may be negotiable and requested that the Union submit such proposals by October 17, 1980.

On November 7, 1980,*4 the Union submitted a number of proposals concerning the performance expectations. The Union's proposals dealt, in the main, with the percentage production expectations assigned to new or returning employees. Additionally, the Union renewed its request for the "historical" data relied upon by management to arrive at the hourly production rates. The Union proposed that a new employee be allowed six months to arrive at 100% of expected level while returning employees be allowed four weeks to arrive at 100% of expected levels.

On November 17, 1980, Respondent responded to the Union's November 7, 1980, letter and informed the Union that its proposals went to substance and hence were non-negotiable. The Respondent further informed the Union that it intended to continue implementation of the expectations beginning November 24, 1980.

On December 10, 1980 and December 18, 1980, various representatives of the Union, by separate letters, renewed the Union's request for the information underlying the production expectations. Both requests were subsequently denied by the Respondent on the ground that the information pertained to matters outside the scope of collective bargaining and, as such, the Respondent was under no obligation to supply same.

The record reveals that the performance expectations were subsequently utilized or relied upon by Respondent as a ground for demoting an employee to a lower grade.

The record further reveals that the IRS and NTEU had been negotiating performance standards and critical elements within the meaning of Section 4302 of the Civil Service Reform Act (CSRA), on a National basis. The record also reveals that the parties entered into an agreement with respect to "employee participation" in April of 1981.

According to the uncontested testimony of Ms. Conway, Chief of the Personnel Branch, the printouts, etc., which comprise the "historical" data requested by the Union, occupy about "90 cubic feet of space".

Discussion and Conclusions

The General Counsel in both his opening remarks and post-hearing brief makes it clear that the alleged Sections 7116(a)(1) and (5) violation of the Statute is predicated solely upon Respondent's action in unilaterally implementing changes in the employees' performance expectations without first notifying the Union and affording it a meaningful opportunity to bargain, at least, with respect to impact and implementation.*5 Additionally, relying primarily on the Authority's decision in National Treasury Employees Union, 3 FLRA No. 119, the General Counsel takes the position that performance expectations are in fact performance standards within the meaning of Section 4302 of the CSRA and, accordingly, the Union is also entitled to bargain over the form of employee participation in the establishment of such performance standards. As a further alternative position, the General Counsel, relying on the Authority's decision in Internal Revenue Service and Brookhaven Service Center, 4 FLRA No. 30, argues that the substance of the expectations is negotiable. Finally, the General Counsel takes the position that the Union is entitled to the information underlying the numerical expectations announced at various times by the Respondent.

The Respondent on the other hand takes the position that the expectations are not equivalent to the performance standards and critical elements encompassed by Section 4302 of the CSRA, that the Authority's decision in Internal Revenue Service and Brookhaven Service Center, supra, does not make the substance of performance expectations negotiable, and that it did give the Union adequate notice of its decision to change or install new performance expectations. Lastly, Respondent takes the position that inasmuch as the Union was not entitled to bargain over the substance of Respondent's expectations, it, the Respondent, was under no obligation to supply the historical data requested by the Union.

Based upon the record as a whole and particularly the uncontested testimony of Ms. Conway, Chief of the Personnel Branch, I can not find, as urged by the General Counsel, that the performance expectations established or changed during the period September 18 1980 through October 1, 1980, amounted to "performance standards" within the meaning of Section 4302 of the CSRA. Thus, the record indicates that a number of similar performance expectations had been in force prior to the passage of the CSRA and that the parties were negotiating, on the national level, the ground rules for the participation of the Union in the establishment of the production standards and critical elements mandated by Section 4302 of the CSRA. Accordingly, the Authority's decision in National Treasury Employees Union, supra, is not applicable to the unilateral changes alleged herein as a violation, and the Respondent is therefore under no obligation to bargain with the Union concerning the form of employee participation in the establishment of the production expectations.

I further find, again contrary to the position of the General Counsel, that the substance of the performance expectations is not a negotiable item. Thus, the Authority in National Treasury Employees Union, supra, made it clear that the levels of output and the quality of work product fall within the rights accorded management to direct employees under Section 7106(a)(2)(A) and assign work under Section

7106(a)(2)(B) of the Statute. The subsequent decision in Internal Revenue Service and Brookhaven Service Center, supra, does not call for a contrary conclusion. In this latter case the Authority made it clear that its decision was confined solely to the particular facts of the case and that while it was finding that a Union proposal concerning the procedure to be utilized in setting production expectation was negotiable, it was not holding "that any proposal concerned with the subject of procedures used to determine acceptable levels of performance would be within the duty to bargain".

In American Federation of Government Employees, AFL-CIO, Local 3656 and Federal Trade Commission, Boston Regional Office, 5 FLRA No. 70, the Authority reiterated its position that Section 7106(a)(2)(A) and Section 7106(a)(2)(B) make the content of performance standards non-negotiable. In this case the Authority reemphasized that, under Sections (b)(2) and (3), an agency has however, the duty to bargain on the procedures management will observe in, and on appropriate arrangements for employees adversely affected by, the establishment of performance standards by agency management.

With the above principles, findings and conclusions in mind, I now turn to the basic facts underlying the General Counsel's contention that the Respondent violated Sections 7116(a)(1) and (5) of the Statute.

The record reveals, and there does not appear to be any dispute, that the Respondent for a number of years had in effect written and/or oral performance expectations in a number of its units where measurable work was performed. The record further indicates that in other units where measurable work was performed no such standards existed.

On August 28, 1980, Respondent announced for the first time its intention to issue written performance expectations for all of its units. Thereafter, Respondent again met with the Union on or about September 10, 1980, and presented to the Union two sample copies of expectations which were going to be distributed to the various managers who would then be responsible for drafting expectations. Neither of the two samples were applicable to any particular unit. Thereafter, without any further meaningful discussion Respondent proceeded to implement performance expectations in some twenty-six units without first giving the Union either notice or copies of the new or revised performance expectations and allowing the Union the opportunity to request impact and implementation bargaining.

All parties agree that as a general rule it is incumbent upon an agency to give the exclusive representative of its employee prior notice of any contemplated change in conditions of employment and allow such representative the opportunity to request, at least, impact and implementation bargaining.

Respondent takes the position that it was not under any obligation to give such notice as its action was mere extension of an existing practice, and that in any event, it did give the Union adequate notice of its decision to implement performance expectations and allow it the opportunity to request impact and implementation bargaining.

I cannot agree with Respondent's position. The law is settled that a substantial change in conditions of employment necessitates impact and implementation bargaining. Here, although not all the changes in performance expectations are set forth in the record, the credited testimony of Mr. Williams establishes that performance expectations were indeed set for a number of units where there were no past written or oral performance expectations. In such circumstances, Respondent was obligated to give the Union notice and an opportunity to bargain over impact implementation. This it did not do.

Respondents announcement of its decision to institute performance expectations and the presentation of two sample performance expectations, which were not applicable to any particular unit, falls short of the duties imposed by the Statute. In order to conduct meaningful negotiations a union must know with some sort of particularity what it is to bargain over. Until it is faced with specific changes in

conditions of employment, how can it determine if there is a substantial impact over which it might want to formulate bargaining proposals. The Union is entitled to specifics not generalities. Having failed to give the Union actual copies of the respective performance expectations prior to instituting same during the period September 18 through October 1, 1980, I find that the Respondent violated Sections 7116(a)(1) and (5) of the Statute.

Finally, with regard to the alleged Section 7116(a)(8) violation predicated upon the Respondent's admitted failure to honor the Union's requests for all the historical data underlying the new or modified performance expectations, I cannot agree that the Union is entitled to ALL the historical data relied upon by Respondent in setting the new or revised performance expectations. Thus, according to Section 7114(b)(4) of the Statute, an agency is only required to furnish data:

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.

Inasmuch as the substance of the performance expectations is not within the scope of the bargaining obligation, Respondent is not required to supply the data underlying same. However, since the Respondent is under an obligation to bargain with the Union over the impact and implementation of the new or modified performance expectations, it is required to supply to the Union all the information in its possession which is "reasonably available and necessary for full and proper discussion" of the impact and implementation issues.

In this latter context, the record is barren of any evidence indicating how any part of the "historical data" relied upon by the Respondent in setting the performance expectations bears any relationship to the impact and implementation discussions or negotiations mandated by the Statute. In the absence of a showing that the historical data is necessary for a full and proper discussion, understanding, and negotiation of the impact and implementation issues, I cannot conclude, as urged by the General Counsel, that Respondent violated Section 7116(a)(8) of the Statute by refusing to make the historical data available.*6 Cf. Director of Administration, Headquarters, USAF, 6 FLRA No. 24.

Aside from the above considerations, I question the validity of the Union's request for the information. While a union does not have to be specific with regard to each and every bit of information requested for purposes of fulfilling its representational duties, it has to do more than merely demand "all historical data" relied upon by Respondent in setting the performance expectations. Thus, I find that it is incumbent upon the Union to designate with some particularity the subjects it wishes to discuss and the relationship of the designated material to such discussion. In the absence of a more definite description of the information desired and a showing of a relationship to the mandatory subject of bargaining, the Respondent does not violate the Statute by denying a union's general, comprehensive, unspecific demand for information.

Having found and concluded that the Respondent violated Sections 7116(a)(1) and (5) of the Statute by virtue of its actions in instituting new or revised performance expectations during the period September 18, 1980 through October 1, 1980, without first giving the Union notice and allowing the Union the opportunity to negotiate concerning the procedures to be utilized in implementing the performance expectations and their impact on adversely affected employees, I recommend that the Authority issue the following order designed to effectuate the purposes of the Statute.*7

ORDER

Pursuant to Section 7118(a)(7)(A) of the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7118(a)(7)(A), and Section 2423.29(b)(1) of the Rules and Regulations, 5 C.F.R. 2423.29(b)(1), the Authority hereby orders that the Internal Revenue Service, Kansas City Service Center, Kansas City, Missouri shall:

1. Cease and desist from:

(a) Instituting new or reviewed production expectations in the Kansas City Service Center without first notifying the National Treasury Employees Union and affording it the opportunity to meet and confer, to the extent consonant with law and regulations, concerning the procedures to be observed in implementing such performance expectations, and their impact on adversely affected employees.

(b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Labor Management Relations Statute:

(a) Rescind and withdraw the performance expectations which were instituted during the period September 18, 1980 through October 1, 1980, without first giving the National Treasury Employees Union prior notice of same and affording it the opportunity to meet and confer, to the extent consonant with law and regulations, concerning, the procedures to be observed in implementing such performance expectations, and their impact on adversely affected employees.

(b) Notify the National Treasury Employees Union prior to the installation of any new or revised performance expectations, and upon request, consult and negotiate with such labor organization, to the extent consonant with law and regulations, concerning the impact and implementation of such new or revised performance expectations.

(c) Post at its Kansas City Service Center, Kansas City, Missouri, copies of the attached notice marked "Appendix", on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms they shall be signed by the Director of the Service Center and they shall be posted for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. The Director of the Service Center shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material.

(d) Notify the Federal Labor Relations Authority in writing, within 30 days from the date of this Order as to what steps have been taken to comply herewith.

IT IS HEREBY FURTHER ORDERED that the remaining allegations of the complaint, which have been found supra not to be violative of the Statute, be, and hereby are dismissed.

BURTON S. STERNBURG Administrative Law Judge

Dated: September 24, 1981 Washington, D.C.

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1. The record reveals that there are approximately 50 different units at the Kansas City Service Center. The work of over 25 of these units is considered or classified as measured work.

2. In line with the Director's decision to establish expectations for all jobs, a committee of managers was formed for purposes of reviewing the existing expectations and establishing guidelines for the setting of expectations by first line supervisors for jobs where no expectations had previously existed.

3. The record indicates that the expectations were based upon the past performance records of the employees in the respective classifications.

4. It appears that the Respondent extended the deadline for proposals from October 17 to November 7, 1980.

5. Thus, according to General Counsel, the violation occurred between September 18 and October 1, 1981, and any evidence bearing on events subsequent thereto, was for purposes of showing impact.

6. The record indicates that the Union wanted to negotiate over the time and percentages set forth in the performance expectations for new and/or returning employees. Had no provision been made in the performance expectations for this group of employees, such time and percentage factors would

appear to be a required impact and implementation item. However, since Respondent has seen fit to include standards for this group in the new expectations, any demand for bargaining thereover would be tantamount to a request for substance bargaining, which, as noted above, is not required.

7. Inasmuch as a status quo ante remedy would not work an undue hardship upon Respondent or significantly disrupt its operation, I shall order that the performance expectations be rescinded. Cf. San Antonio Air Logistics Center (AFLC), Kelly AFB, Texas, 5 FLRA No. 22.

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

AND IN ORDER TO EFFECTUATE THE POLICIES OF

CHAPTER 71 OF TITLE 5 OF THE

UNITED STATES CODE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

We hereby notify our employees that:

WE WILL NOT institute new or revised performance expectations without first providing to the National Treasury Employees Union and National Treasury Employees Union Local Chapter 66, the exclusive representative of our bargaining unit employees, adequate advance notice and a meaningful opportunity to bargain consonant with law and regulations, concerning the procedures to be observed in implementing such performance expectations, and the impact of the performance expectations on adversely affected employees.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights assured by the Statute.

WE WILL rescind and withdraw the performance expectations which were instituted during the period September 18, 1980 through October 1, 1980, without first giving advance notice to the National Treasury Employees Union and National Treasury Employees Union Local Chapter 66 of the performance expectations, and affording it the opportunity to meet and confer, to the extent consonant with law and regulations, concerning, the procedures to be observed in implementing the performance expectations, and their impact on adversely affected employees.

WE WILL in the future notify the National Treasury Employees Union and the National Treasury Employees Union Local Chapter 66 to the installation of any new or revised performance expectations, and upon request, consult and negotiate with such labor organization, to the extent consonant with law and regulations, concerning the impact and implementation of such new or revised performance expectations.

_____ (Agency or Activity)

Dated:_____

By:_____
(Signature)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director for the Federal Labor Relations Authority, Region VII, whose address is: Suite 680, City Center Square, 1100 Main Street, Kansas City, Missouri, 64105 and whose telephone number is: (816) 374-2199.

